


## MEMORANDUM

DATE: January 18, 2019

TO: Brad Hendrickson, Secretary of the Senate

FROM: Tara L. Parker 

RE: Report of Investigation Regarding Workplace Misconduct Allegations

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### I. SUMMARY OF THE INVESTIGATION PROCESS

The purpose of this investigation was to investigate allegations made by Complainant<sup>1</sup> about Respondent, then-Senator Kevin Ranker.<sup>2</sup> Complainant reported that Respondent violated the Washington State Senate's Policy on Appropriate Workplace Conduct prohibitions against sexual harassment, other intimidating, hostile, or offensive conduct, and retaliated against her for filing a complaint.

On October 8, 2018, Complainant told two people in Governor Inslee's administration that she was thinking about speaking with a reporter on the record about alleged misconduct by Respondent. Complainant reported a variety of allegations stemming back to 2008, when Respondent was a San Juan County Council member and she worked for the Council. Complainant reported Respondent also committed misconduct when he was a Senator in 2010, as well as from approximately 2011-2015, when she was an employee of a state agency. Complainant stated that she was alleging sexual harassment and retaliation, but she gave few specific details at that time. She said that she felt compelled to report her experiences publicly after recently watching the way the United State Senate Judiciary Committee handled sexual misconduct allegations against U.S. Supreme Court nominee, Brett Kavanaugh.<sup>3</sup> Complainant stated that she wanted to give the Governor's office notice that she would likely go public with her claims in December, after she attended to personal commitments.

On October 18, 2018, the Secretary of the Senate was informed of the complaint and he deduced Complainant's identity from the time frames included in the report. On October 23, Senate Counsel informed Complainant that they had an obligation to conduct an investigation and had begun the process of selecting an outside investigator.

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<sup>1</sup> The 2018 Washington State Senate Policy on Appropriate Workplace Conduct mandates that the confidentiality of the complaint and the investigation shall be maintained to the extent feasible and that any resulting report will not contain the names of any involved parties other than the Senator.

<sup>2</sup> Senator Kevin Ranker submitted his resignation from the Washington State Senate to Governor Jay Inslee on January 11, 2019, effective immediately.

<sup>3</sup> Dr. Christine Blasey Ford alleged that Judge Kavanaugh sexually assaulted her in 1982. Both Kavanaugh and Blasey Ford were questioned by members of the Judiciary Committee and a prosecutor on September 27, 2018. The following day, the Judiciary Committee voted 11-10 to send the nomination to the floor. The Senate Judiciary Committee then requested a week-long supplemental background investigation into the sexual assault allegations. On October 6, 2018, the Senate voted 50-48 to confirm Kavanaugh's nomination to the Supreme Court.

On October 25, 2018, I was hired to investigate this matter. On November 1, 2018, Complainant responded to my requests to schedule an intake interview. Complainant stated that she would fully cooperate. However, Complainant had other commitments that prevented her from being available until December 4<sup>th</sup>. She nonetheless provided additional details regarding her complaint and identified sixteen potential witnesses.

In sum, Complainant's allegations raised three questions, which defined the scope of this investigation. Those questions were: (1) did the Senate properly handle Complainant's 2010 misconduct allegations; (2) did Respondent violate the Senate's 2010 policy prohibiting harassment and discrimination based on gender; and (3) did the Respondent retaliate against the Complainant and/or otherwise violate the Senate's applicable policies prohibiting harassment generally?

Over the course of the investigation, I interviewed Complainant in person twice, for a total of approximately eight hours. We also spoke on the phone multiple times and corresponded by email throughout the investigation. I interviewed Respondent in person three times, for a total of approximately twelve hours. We met first on November 8, 2018, again on January 7, 2019, and finally on January 11, 2019. I also spoke with Respondent on the phone multiple times and corresponded with him by email throughout the investigation. Both parties requested multiple people whom they stated should be interviewed for this investigation. Forty-three witnesses were interviewed. I interviewed some of these witnesses on more than one occasion and followed up with some witnesses on the telephone and/or by email. Almost all of the witnesses expressed serious concerns about maintaining confidentiality due to their fears of retaliation or other potential negative professional impacts.<sup>4</sup>

Numerous documents were reviewed in the course of this investigation, including the Senate's Respectful Workplace policies in effect 2009-2019, legislative records, travel and work-related documents, emails, and text messages.

This Report contains only facts that were relevant and necessary to the determination of the allegations. All findings are based on a preponderance of the evidence. The witnesses who were interviewed and the documents that were reviewed each conveyed an account of, and a perspective on, one or more of the events recounted below. On various points, some of these accounts were incomplete or conflicting. The following description of events represents a reconciliation of competing versions and, where necessary, the descriptions are informed by an assessment regarding witness's credibility in view of all the facts and circumstances on a more probable than not basis.

In weighing the credibility of the Complainant, Respondent and witnesses, I considered the factors provided in the Equal Employment Opportunity Commission's Guidance on Credibility: (1) the inherent plausibility of the witness's statements; (2) the witness's motive to give false statements; (3) whether the Respondent had a history of similar behavior to that which was alleged (4) whether the witness's testimony is corroborated by documents, or by others who saw or heard about the alleged incidents around the same time they occurred; and (5) the witness's demeanor while testifying. As the EEOC notes, "none of the above factors are determinative as to credibility. For example, the fact that there are no

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<sup>4</sup> Five additional potential witnesses were contacted, but they did not respond as of the date of this Report. Also, Complainant provided the names of twelve additional potential witnesses whom I did not contact because their purported knowledge was deemed substantially the same as at least three of the individuals who were interviewed.

eye-witnesses to the alleged harassment by no means necessarily defeats the complainant's credibility, since harassment often occurs behind closed doors."<sup>5</sup> For the sake of brevity, the details of how each of these factors affected each credibility determination are not all included in this Report.

All of the information the witnesses provided regarding the allegations was considered in drafting this Report and was taken into account in the analysis and the conclusion even if it is not specifically referenced in this Report. This Report recounts some of the information obtained in the investigation to illustrate the process, analysis, and conclusions, but it does not contain all the information obtained due to its volume. This Report also combines and summarizes information as opposed to recounting it verbatim.

## **II. APPLICABLE STANDARDS**

This investigation was undertaken pursuant to the Washington State Senate's 2018 Respectful Workplace Policy. The Policy's purpose and intent are as follows:

The Washington State Senate will provide and maintain a work environment free from discrimination and harassment. Senators and employees are expected to maintain a workplace free from harassment and discrimination and to conduct themselves so that no harassment or discrimination occurs in any action with respect to hiring, firing compensation, benefits promotions, reclassification disciplinary actions, or any other work conditions.

Harassment and discrimination undermine the integrity of the employment relationship and the self-esteem of the individuals to whom they are directed and negatively affects morale and work performance. All employees must be allowed to work in an environment free from unsolicited and unwelcome comments or conduct.

The Policy also provides the following applicable provisions regarding prohibited conduct:<sup>6</sup>

### **Harassment**

No Senator or employee shall engage in harassment. As used in this policy, the term "harassment" includes but is not limited to comments, slurs, jokes, innuendos, cartoons, pranks, requests for favors or other verbal, non-verbal, or physical conduct of a discriminatory nature, related to a protected status as defined in RCW Chapter 49.60, when:

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<sup>5</sup> EEOC Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors), EEOC No. 915.002.

<sup>6</sup> The applicable policy language regarding standards of conduct in effect between 2010 and 2019 is functionally identical. However, the 2010 policy specifically prohibits harassment "based on gender or other protected status," while the 2018 policy prohibits discrimination on the basis of a protected status as defined by RCW 49.60, which specifies sex as a protected status. Under the Washington Law Against Discrimination, "'Sex' means gender." RCW 49.60.040(25).

- Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis of employment decisions affecting the individual; or
- Such conduct has the purpose or effect of interfering with any individual's work performance or creating an intimidating, hostile, or offensive work environment.

#### **Other Offensive Conduct**

No Senator or employee shall engage in any behavior that a reasonable person would find to be bullying, threatening, intimidating, coercive, demeaning or derogatory toward another, or which could be reasonably anticipated to have the effect of interfering with an individual's work performance.

#### **Retaliation**

No Senator or employee shall directly or indirectly intimidate or threaten any person to prevent them from reporting conduct prohibited by the Policy on Appropriate Workplace Conduct, nor shall any such action be taken in retaliation for reporting a violation of this Policy, filing a complaint, participating in an investigation, or assisting in the enforcement of an approved disciplinary sanction.

### **III. ALLEGATIONS AND ANALYSES**

#### **A. Allegations Regarding the Senate's Response to Complainant's 2010 Report of Misconduct**

##### **1. Information from Complainant**

Complainant alleged that in February 2010, she reported misconduct by the Respondent. She said, per the 2010 Senate Harassment and Discrimination Policy, she first went to a staff person designated to receive such complaints and generally conveyed her concerns. That person, the "Facilitator", then notified Senate Counsel. The three of them went to a restaurant the next day and, according to Complainant, she reported that Respondent yelled at her, slammed doors and sexually harassed her.

Complainant alleged that Senate Counsel then reported the matter to the Secretary of the Senate, and she was told that the two of them addressed her complaint with Respondent. Also, she said that one or more of those individuals told her that Senate leadership would be informed and that they would help her find another job.

Approximately two weeks later, Complainant accepted a position at another state agency. She said she was not aware of any assistance provided by anyone at the Senate related to getting the new position, although the Facilitator was listed as a reference on her application.

Over the years that followed, Complainant told many people that she reported that Respondent sexually harassed her and that “the Senate did nothing.”

2. Information from other Witnesses

Interviews were conducted with the Facilitator, the 2010 Senate Counsel, the 2010 Secretary of the Senate, and another Senate staffer with knowledge of the related events. All potentially related emails and records were requested. Several related emails and records from Complainant and the Facilitator were examined.

The witnesses above consistently reported that although three of them initially had some suspicion of sexual harassment, Complainant never specifically alleged such misconduct. Instead, she alleged that Respondent slammed doors, shouted in anger, and caused her to feel very uncomfortable. Senate Counsel had independent knowledge of that general misconduct by Respondent and deemed the complaint credible. The witnesses consistently reported that Senate Counsel and the Secretary of the Senate immediately brought the complaint to Respondent and informed him that such conduct is unacceptable. Respondent was reportedly contrite and apologetic. Finally, the witnesses reported that they did not inform Senate leaders of the complaint, nor did they recall any offer or provision of further assistance to the Complainant.

No records of the 2010 complaint were located. Witnesses stated that they were not in the practice of keeping such records at that time. None of the relevant emails from Complainant and the Facilitator contained any indication that Complainant alleged sexual harassment.

Finally, documents and witness statements related to Complainant’s acquisition of her new state agency position all demonstrated that the agency hired her without any input from anyone at the Senate.

3. Information from Respondent

Respondent stated that he was informed of the 2010 general misconduct complaint by the Secretary of the Senate and Senate Counsel. Respondent stated that he admitted to yelling once and slamming a door once, and that he was apologetic. He said that he was never told that Complainant alleged sexual harassment in 2010, and that he never had any reason to believe she made such a report.

4. Subsequent Information from Complainant

In multiple conversations during the investigation, Complainant reviewed the information gathered with respect to her 2010 claim. Complainant tearfully recalled feeling “terrified and paralyzed” during the meeting with the Facilitator and Senate Counsel. And she recalled that shortly before she made her complaint, there was a situation at the Senate that made her deeply fearful of how a sexual harassment complainant would be treated by some people in and around the Legislature. She described an incident

involving a different complainant and a different alleged harasser.<sup>7</sup> Complainant said that in and around the Capitol building, she heard multiple people criticize that Complainant for coming forward and expressing sympathy for the alleged harasser and the harasser's spouse. Complainant said she was afraid she would be also be subjected to similar "victim blaming" and her career would be ruined.

Ultimately, Complainant concluded that she had been mistaken about the details of the conversation she had with the Facilitator and Senate Counsel and she conceded that she probably did not specifically tell them she felt sexually harassed in 2010.

5. Analysis

Based on the information obtained in this investigation, a preponderance of the evidence supports a finding that, in 2010, the Complainant reported only general misconduct and it was handled in a manner consistent with the policy in effect at that time by Senate Counsel and the Secretary of the Senate.

B. Allegations of Harassment Based on Gender or Sex

1. Information from Complainant

Complainant alleged that she had a consensual sexual affair with Respondent in late 2008 when he was a San Juan County Council member and she worked for the Council. Complainant provided detailed information and supporting documentation regarding the related timing and events.

Respondent was elected to the Washington State Senate in November 2008. Complainant stated that, both before and after the election, Respondent talked about the various ways being employed by him would benefit her career and encouraged her to take a position working for him. Complainant provided emails supporting that allegation.

Complainant began working for Respondent on June 24, 2009. Complainant stated that three or four weeks after the 2010 legislative session started, Respondent engaged in conduct that felt sexual in nature. She alleged that he rubbed her shoulders in the office when nobody else was there, encouraged her to drink wine and stay late, and made flirtatious comments. Complainant stated that such conduct looked and felt to her like the way he acted toward her in 2008 when they were sexually involved. She said that she conveyed that such conduct was now unwelcome by saying she just wanted to go home or by tensing up and moving away from him.

Finally, Complainant said the alleged sexual conduct made her feel very anxious and uncomfortable, and that sometimes, because she did not want to upset him, she responded with nervous laughter. Complainant also alleged that when he was rebuffed, Respondent reacted by treating her disrespectfully and making increasing work-related demands.

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<sup>7</sup> This matter was reported to Senate administration, which addressed it in accordance with the applicable harassment and discrimination policy, and has since been publicly reported.

2. Information from other Witnesses

Three witnesses reported that Complainant told them Respondent sexually harassed her in 2010. These witnesses recalled Complainant describing the events to them in years past, using terms and details that were consistent with her current Complaint. Four other witnesses reported that Complainant told them substantially the same allegations, though with fewer details. Four other witnesses reported that Complainant told them she was "harassed" by Respondent and, though she did not say it was sexual in nature, they confidently deduced as much from her word choices, vocal tone, body language and nervousness.

3. Information from Respondent

Respondent also stated that he and Complainant has a consensual affair in late 2008.

However, Respondent denied intentionally engaging in conduct of a sexual nature toward Complainant in 2010. Respondent stated that he offered Complainant a glass of wine in the office on occasion, but only with the intent of being courteous. He also denied that he ever "rubbed" Complainant's shoulders. However, he conceded that he may have touched her shoulders in a non-sexual way. Respondent denied specifically making sexual overtures toward Complainant, but he conceded that their office dynamic was occasionally flirtatious and unprofessional.

On January 7, 2019, Respondent was presented with the witness statements that consistently corroborated Complainant's claims that he created a hostile environment by engaging in unwelcome conduct that she perceived to be sexual in nature. Respondent conceded that the dynamic between them was, at times, inappropriate due to their prior relationship and he acknowledged that her allegations that he violated the Senate's policy prohibiting harassment were founded.

4. Analysis

Based on the information obtained in this investigation, a preponderance of the evidence supports a finding that Respondent engaged in behavior that constituted harassment under the applicable Senate policy prohibiting harassment and discrimination based on gender.

C. Allegations of Retaliation and Other Misconduct

1. Information from Complainant

Complainant reported that Respondent retaliated against her while she was a state agency employee between late 2010 and early 2015. The conduct she specifically alleged was as follows:

- Respondent disparaged her skills and qualifications to third parties with whom she worked.
- Respondent yelled at her and criticized her directly on at least two occasions.

- Respondent spoke to and about her in abrasive, embarrassing ways in meetings with others.
- Respondent criticized her performance and threatened to eliminate the Commission, which had appointed Complainant's boss.
- Respondent looked up her salary, said she was overpaid, and threatened to eliminate her job.
- Respondent refused her requests to meet and discuss issues related to the agency she worked for.

Complainant reported, in detail, that the conduct alleged above created significant professional obstacles and caused her great emotional distress.

Complainant also produced a text message which she claimed demonstrated that Respondent unduly criticized her performance and threatened to eliminate the Commission that had appointed Complainant's boss. The undated text reads as follows:

Respondent: Where are you? No one testifying on your budget? It is seriously harmed.

Complainant: Can't. Have to run through gov office.

Respondent: He works for the commission???

Complainant: Yes, but we are asked to coordinate all concerns thru Gov.

Respondent: So [REDACTED] and I will introduce the bill eliminating the commission – he says he'll prime.

Complainant stated that the text refers to the absence of testimony from the agency she worked for at a 2015 budget hearing. She said that in her position at the agency, she was expected to coordinate agency testimony on proposed Senate or House budgets through the Governor's office or the Office of Financial Management (OFM). As such, according to Complainant, it was inappropriate and hostile for Respondent to text her criticizing the agency's absence and saying that she "seriously harmed" her agency. She also stated that Respondent's statement, that he and another legislator would introduce a bill to eliminate "the commission," was a threat to her agency and her job.

## 2. Information from other Witnesses

Multiple witnesses, including colleagues, Complainant's supervisors, and legislators who interacted with Complainant at the time, corroborated her assertion that Respondent's conduct caused her significant emotional distress. Multiple witnesses also stated that Complainant specifically told them about some or all of the types of mistreatment alleged above. And several witnesses reported observing Respondent treat Complainant and/or others in abrasive, hostile ways that were consistent with Complainant's



allegations. Moreover, many witnesses – including some who Respondent wanted interviewed for this investigation – described behavior by Respondent that was unprofessional and upsetting to some people.

None of the witnesses said they had any basis to believe that Respondent's treatment of Complainant was motivated by specifically retaliatory animus toward her. Instead, many witnesses stated that Respondent engaged in that type of conduct many times with respect to many people when he was displeased with their positions on issues he was passionate about. Witnesses provided numerous examples of Respondent expressing negative opinions in unprofessionally harsh terms, and with aggressive vocal tones and body language.

Five witnesses who held agency or government positions with direct knowledge and experience related to the subject of the text above provided interpretations that were consistent with Complainant's. In sum, they said that Complainant was correct that the agency Complainant worked for is expected to coordinate budget testimony with the Governor's office and/or OFM. They also said that Respondent and the Member he referred to were both in positions of great power over the agency and it was reasonable for Complainant to feel threatened by the text.

Conversely, the Member whom Respondent refers to in the text as the one who "says he'll prime" the "bill eliminating the commission," disagreed with Complainant's interpretation. He said he did not remember the specific situation, but Respondent's words were "typical of the kind of banter that goes on during budget work." He added that Respondent was a consistently strong supporter of the agency and, to his knowledge, he never made any attempt to cut the agency's budget.

Finally, four witnesses – a legislator, two Senate staff members and a lobbyist – stated that they observed Respondent providing ample support to the agency and consistent access to Complainant.

### 3. Information from Respondent

Respondent initially denied Complainant's claims of misconduct between late 2010 and early 2015. He said he never intended to disparage her, he never yelled at her, and he never said or did anything that could be reasonably construed as a threat to her agency or her job. Moreover, he said his conduct related to Complainant and the agency she worked for was never informed by any thoughts he had about her 2010 complaint.

Specifically, Respondent said Complainant misconstrued the text message above. He said he was trying to help the agency by pointing out that the absence of testimony from the agency could harm its budget. Furthermore, he said the reference to eliminating the commission was a joke, which Complainant should have known.

Respondent also provided numerous records and documents reflecting that he consistently supported the interests of the agency Complainant worked for, as well as his calendar and text messages that reflected many meetings and communications with Complainant and other individuals at the agency.

On January 7, 2019, Respondent was presented with the large volume of witness testimony that consistently corroborated Complainant's claims that he disparaged her directly and to third parties, spoke to her in abrasive and aggressive ways, and caused her to feel significant anxiety regarding her personal

and professional wellbeing. He responded with profound regret and acknowledged that her allegations of general misconduct were founded.

4. Analysis

Based on the information obtained in this investigation, a preponderance of the evidence does not support a finding that Respondent directly or indirectly attempted to use his official authority and influence in retribution for, or out of retaliatory animus related to, Complainant's 2010 complaint.

However, the information obtained in this investigation does support a finding that Respondent engaged in behavior that had the purpose and effect of interfering with Complainant's work performance and creating a hostile, intimidating or offensive work environment with respect to Complainant's official efforts to advance the interests of the agency she worked for.

**IV. CONCLUSION**

For the reasons set forth above, based on the information obtained in this investigation, a preponderance of the evidence supports the conclusions that (1) the Senate properly handled Complainant's 2010 misconduct allegations; (2) Respondent violated the Senate's 2010 policy prohibiting harassment and discrimination based on gender; (3) the Respondent did not retaliate against the Complainant; and (4) the Respondent violated the Senate's applicable policies prohibiting harassment generally.